THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.15107 of 2001

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Dated: 20.03.2006

Between:

Dr. Indira Venkataratnam, w/o Dr. T. Adinarayana, Associate Professor and Dy. Medical Superintendent, Hyderabad.

..... PETITIONER

AND

The Nizam's Institute of Medical Sciences, Punjagutta, Hyderabad, rep. by its Executive Board and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.15107 of 2001

Order:

Questioning the impugned order dated 08.03.2001 of respondent No.2 imposing penalty of postponement of one annual increment with cumulative effect, which was confirmed in appeal by order dated 02.07.2001of respondent No.1, the petitioner filed the present writ petition.

The case of the petitioner, in brief, is that she has been working as Deputy Medical

Superintendent in respondent No.1-Institute and was in-charge Medical Superintendent for about one and half year. While her claim for selection as a regular Medical Superintendent was not considered, and when the case of another Doctor, who had not even applied for, was considered and appointed to the said post, she protested and ventilated her grievance to respondent No.2, but as no action was taken by him, she sent a representation dated 14.10.2000 to the Chairman of the respondent-Institution. Alleging that by not forwarding her representation through proper channel, she violated NIMS Employees Conduct Standing Orders, respondent No.2, by order dated 30.11.2000, kept the petitioner under suspension and ordered disciplinary enquiry against her. On receipt of notice from the Enquiry Officer the petitioner filed a representation stating that no charges were framed against her, and without framing charges and without giving any opportunity to submit her explanation, no enquiry could be held. After that, respondent No.2, by proceedings dated 26.12.2000, framed the charges, and to the said charges, the petitioner submitted her detailed explanation on 09.01.2001, wherein she denied the charges and specifically requested for opportunity of personal hearing. The petitioner states that after submitting her explanation there was complete silence on the part of respondent No.2, and without conducting any enquiry all of a sudden the impugned order was passed and served on her. Questioning the said order, she preferred an appeal to respondent No.1, which was also dismissed by order dated 02.07.2001. Aggrieved by the same, she filed the present writ petition.

The main contention of the learned counsel for the petitioner is that before passing the impugned order, no regular enquiry was conducted, and since withholding of one annual increment of the petitioner with cumulative effect is a major penalty, enquiry has to be conducted and in support of his contention he placed reliance on the judgment of the apex Court reported in "***Kulwant Singh Gill v. State of Punjab***[1]".

On the other hand, learned counsel for the respondent-Institution relying on Rule 13 – Special Procedure in certain cases, Clause (iii) of the Nizam's Institute of Medical Sciences Employees (control and appeal) Rules (for short 'Rules'), contended that in the interests of the image of the Institute, enquiry was not held and based on the explanation submitted by the petitioner, her case was considered and the impugned order was passed by imposing minor penalty.

Rules 5 to 7 prescribes the penalties thus:

5. Penalties: The following penalties may be imposed on an employee as hereinafter provided for misconduct neglect or lapse on his part or for any other good and sufficient reasons.

6. Minor Penalties:

i. Censure

ii. Fine

iii. Withholding of increments with or without cumulative effect.

iv. Withholding of promotion.

v. Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Board by any negligence or breach of orders.

7. Major Penalties:

i. Reduction to a lower rank or a lower post or to a lower pay scale or to a lower stage in a pay scale or to a lower rank in the seniority list.

ii. Compulsory retirement.

iii. Removal from service which shall not ordinarily be a disqualification for future employment.

iv. Dismissal which shall ordinarily be a disqualification for future employment.

Withholding of increments of pay simpliciter is a minor penalty under Rule 6 (iii) of the Rules. But Rule 7 (i) which postulates reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay, is a major penalty. In ***Kulwant Singh Gill's case*** (1 supra), the Supreme Court also observed that withholding of annual increment, which has the effect on the future increments and lowering of pay scale of an employee, could be treated as major penalty, which needs regular enquiry. In that view of the matter, the penalty of withholding of annual increment of the petitioner with cumulative effect, which can have the effect on his future increments and lowering his pay scale, could be treated as major penalty, which needs regular enquiry. Admittedly, in the instant case, before passing the impugned order no

regular enquiry was conducted, hence, the same is vitiated.

At this stage, learned counsel for the petitioner submits that during the pendency of the writ petition, the petitioner retired from service. In that view of the matter, whether it is expedient to direct an enquiry at this stage or not is left to the authorities concerned.

In the circumstances, the writ petition is allowed and the impugned order dated 08.03.2001 is set aside. However, since the petitioner has already retired from service, it is for the authorities concerned to consider whether or not to initiate further proceedings in the matter. No costs.

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N.V. RAMANA, J.

Date: 20.03.2006

Nsr/Ksr